



## **THE SAN BERNARDINO COUNTY 401(a) DEFINED CONTRIBUTION PLAN**

Adopted by the Board of Supervisors, December 21, 1999  
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**THE SAN BERNARDINO COUNTY  
401(a) DEFINED CONTRIBUTION PLAN**

The San Bernardino County 401(a) Defined Contribution Plan is effective January 1, 2000 and constitutes a defined contribution, profit sharing plan (qualified under the applicable portions of Section 401(a) of the Internal Revenue Code) for the exclusive benefit of eligible employees and their beneficiaries.

**ARTICLE I  
DEFINITIONS**

Where the following words and phrases appear in the Plan, they have the respective meanings set forth below, unless the context in which they are used clearly indicates a different meaning.

**1.01 Account**

Account shall mean the separate accounts that the 401(a) Plan Administrator shall maintain to record the interest of a Participant in the Plan. Such Accounts may include the Employer Contribution Account and the Employee Rollover Contribution Account.

**1.02 Anniversary Date**

Anniversary Date shall mean each January 1 after the Effective Date.

**1.03 Annual Additions**

The term Annual Additions means, for any Plan Year, the sum of: (1) all Contributions made on behalf of the Participant in accordance with this Article III; (2) the forfeitures allocated to such Participant; (3) amounts credited to an individual medical account, as defined in Section 415(l)(2) of the Internal Revenue Code, which is part of a defined benefit plan maintained by the Employer; and (4) amounts attributable to post-retirement medical benefits to a key employee, as required by Section 419A(d)(2) of the Internal Revenue Code.

**1.04 Base Salary**

For Eligible Employees paid on an hourly basis, Base Salary for each Pay Period is equal to the number of hours paid for that Pay Period times hourly rate of pay. For Eligible Employees who are elected officials paid on a daily basis, Base Salary for each Pay Period is equal to the number of days paid during that Pay Period times daily rate of pay.

**1.05 Beneficiary**

Beneficiary shall mean the person or persons designated to receive benefits payable under the Plan in the event of a Participant's death. In the absence of such a designation, or if no designated person is living when a benefit is payable, the Defined Contribution Committee shall be empowered to designate as Beneficiary the following order of priority:

- (a) Spouse;
- (b) Children;
- (c) The estate of the Participant.

- 1.06 Code  
The Code shall mean the Internal Revenue Code of 1986, as amended.
- 1.07 Compensation  
Compensation shall mean pay reportable on Internal Revenue Form W-2, except that Compensation shall be determined before reduction for Compensation Reduction Contributions to the County Salary Savings Plan, the County Employees' Retirement Association Plan, the County 457(b) and 457(f) Deferred Compensation Plans, and the County Sections 125 and 129 Plans.
- The annual compensation of each Participant that may be taken into account in determining allocation for any Plan Year shall not exceed the limit under Code Section 401(a)(17) adjusted under such regulations as may be issued by the Secretary of the Treasury.
- 1.08 Contributions  
Contributions shall mean Employer Contributions. Contributions may also include Employee Rollover Contributions.
- 1.09 Controlled Group  
Controlled Group shall mean the County and any other Employer with whom the County is required to be aggregated as a single employer under Section 414(b) or (c) of the Code.
- 1.10 County  
The County shall mean the County of San Bernardino.
- 1.11 Defined Contribution Committee  
The Defined Contribution Committee shall mean the Committee appointed by the County in conformance with Section 9.01.
- 1.12 Dependents  
Dependents shall include a Participant's spouse and such other individual whose relationship to the Participant is described in Internal Revenue Code Section 152.
- 1.13 Disability  
Disability shall mean the inability of the Participant, by reason of bodily injury or illness, to perform the requirements of any position with the Employer which can be expected to result in death or to be of long-continued and indefinite duration. In the opinion of a physician who satisfactorily certifies to the Plan Administrator the disability is such that the Participant is permanently unable to perform the usual duties of employment and by reason of such disability is no longer employed by the Employer.
- 1.14 Effective Date  
The Effective Date shall mean January 1, 2000.
- 1.15 Eligible Employee  
Eligible Employee means an employee who is:

- (a) a County Elected Official serving on the Board of Supervisors, or
- (b) a County Elected Official serving as a County Department Head, or
- (c) a County contract employee, if the contract as approved by the Board of Supervisors specifies that the employee is eligible, or
- (d) other categories of employees as specified by the Board of Supervisors.

1.16 Employee

Employee shall mean any person who is employed by the Employer, but excludes any person who is employed as an independent contractor.

1.17 Employee Rollover Contribution

A Contribution that qualifies as an eligible rollover contribution from an eligible retirement plan.

1.18 Employer

Employer shall mean the County of San Bernardino or an affiliated joint powers authority that has adopted this Plan.

1.19 Employer Contribution

An Employer Contribution made as a percentage of the Participant's Compensation.

1.20 Employment Commencement Date

Employment Commencement Date shall mean the date an Employee is first employed by the Employer.

1.21 Entry Date

The Entry Date for an Eligible Employee shall be the first day of employment on which the Employee becomes an Eligible Employee or any day thereafter on which the Employee directs the County to contribute to the Plan on the Employee's behalf.

1.22 Investment Advisor

Investment Advisor shall mean that person or organization designated by the Defined Contribution Committee to render investment advice and who is registered under the Investment Advisor's Act of 1940.

1.23 Investment Manager

Investment Manager shall mean that person or organization designated by the Defined Contribution Committee to have the power to manage, acquire, or dispose of Plan assets, and who is registered as an investment advisor under the Investment Advisor's Act of 1940.

1.24 Normal Retirement Date

Normal Retirement Date shall mean a Participant's 55th birthday.

- 1.25 Participant  
Participant shall mean an Eligible Employee who commences to participate in this Plan under the provisions of Article II thereof, and whose employment or participation has not terminated. An Employee who becomes a Participant shall remain a Participant under the Plan until the Trustee has fully distributed the Participant's accrued benefit to the Participant.
- 1.26 Pay Period  
Pay Period shall mean the fourteen (14) day period for which the Employer issues pay warrants.
- 1.27 Plan  
The Plan shall mean the employee benefit plan set forth in this document and as amended hereafter, which is known as:
- "The San Bernardino County 401(a) Defined Contribution Plan."
- 1.28 Plan Administrator  
The Plan Administrator shall mean the County's Human Resources Chief of the Employee Benefits and Services Division.
- 1.29 Plan Record Keeper  
Plan Record Keeper shall mean that individual or organization selected by the County to maintain the records of the Plan.
- 1.30 Plan Year  
The Plan Year shall commence as of January 1 of each year and end as of December 31 each year.
- 1.31 Trust  
Trust shall mean the legal entity created by this Plan.
- 1.32 Trustee  
Trustee shall mean an individual or individuals or institutional corporate trustee selected by the County to safeguard the Trust assets and to carry out the directions of the Defined Contribution Committee.
- 1.33 Trust Fund  
Trust Fund shall mean all property of every kind held or acquired by the Trustee under this Trust.
- 1.34 Valuation Date  
Valuation Date shall mean the last day of the Plan Year ending December 31.



## **ARTICLE II PARTICIPATION**

### **2.01 Election to Participate**

Each Eligible Employee becomes a Participant on the Eligible Employee's Entry Date.

### **2.02 Continuation of Participation**

A person will continue to be a Participant for as long as an Account is maintained for the Participant in accordance with Section 4.01. A Participant who ceases to be an Eligible Employee, as defined in Section 1.15, will remain a Participant, but will no longer be eligible for Employer Contributions.

## **ARTICLE III CONTRIBUTIONS**

### **3.01 Employer Contributions**

Biweekly contributions for Eligible Participants as defined in Section 1.15 shall be equal to a percentage of a Participant's Compensation during that period as specified by the Board of Supervisors. Employer Contributions shall not exceed the amount set forth in Section 415(c) of the Code. In the event that the limitations set forth in Code Section 415(c) are exceeded, then the Plan Administrator shall direct the Plan Record Keeper as to the proper correction method permissible under the Code and other applicable Internal Revenue Service guidance, including calculation of earnings or losses and the proper tax reporting with respect to such distribution.

### **3.02 Employee Rollover Contribution**

- (a) Amounts that are considered "eligible rollover distributions" in accordance with Code Section 402(c)(4) may be rolled over by a Participant from an "eligible retirement plan." The amounts rolled over from an eligible retirement plan may be separately accounted for.
- (b) For purposes of this Section, the term "eligible retirement plan" shall mean any other 401(a) plan, a 403(b) program, a 457(b) plan maintained by an employer which satisfies the definition of Code Section 457(c)(1)(A) ("a governmental plan"), an individual retirement account as described in Code Section 408(a), and an individual retirement annuity as described in Code Section 408(b). For purposes of this Section, the term "amounts rolled over from an eligible retirement plan" shall mean:
  - (i) amounts rolled to the Plan directly from another eligible retirement plan;
  - (ii) distributions received by Participant from another eligible retirement plan that are eligible for tax free rollover to a 401(a) plan and that are rolled over by the Participant to the Plan within sixty (60) days, following his receipt thereof;
  - (iii) amounts rolled over to the Plan under subparagraphs (i) and (ii) by Participant who is also a surviving spouse or a spouse or former spouse who is an alternative payee as defined in Code Section 414(p).

3.03 Limitations on Annual Additions

Notwithstanding any other Plan provisions, the Annual Additions to each Participant's Account for any Plan Year will not exceed the least of the following:

- (a) \$40,000, adjusted to take into account any cost-of-living increase adjustments provided for the Plan Year under Section 415(d) of the Internal Revenue Code; or
- (b) One hundred percent (100%) of the Participant's Compensation for the Plan Year.

3.04 Military Service

Notwithstanding any provision of this Plan to the contrary, contributions, benefits and service credit with respect to qualified military service will be provided in accordance with Section 414(u) of the Internal Revenue Code.

**ARTICLE IV  
RECORDKEEPING**

4.01 Maintenance of Records

The Plan Record Keeper will establish and maintain separate records of each Participant's Employer Contribution Account, Employee Rollover Contribution Account, and one or more investment accounts within said Account.

4.02 Valuation of Accounts

The Plan Administrator shall determine the frequency of the determination of the current market value of the Accounts in the Plan, but no less frequently than annually. The Plan Administrator may require the Plan Record Keeper to make such valuation on a daily basis. As of each such valuation, all investment income and capital gains and losses (both realized and unrealized) which have occurred since the preceding valuation shall be proportionately allocated in an equitable manner among the Participants' Accounts. In the event more than one pooled investment fund is being utilized, such allocation shall be performed separately with respect to each such investment fund. All contributions by or for the Participant, less any distributions and expense charges, shall also be credited to the Participant's Accounts.

4.03 Allocation of Contributions

The Contributions made by the Employer on behalf of the Participants shall be allocated to the Participant's Accounts as soon as administratively feasible following the completed processing of each Payroll Period.

4.04 Determinations and Adjustments Binding on Participants

The Trustee's and/or the Plan Record Keeper's determination of the value of the Trust Fund and adjustments made or caused to have been made by the Plan Record Keeper and/or the Plan Administrator to all Accounts will be conclusive and binding on all Participants.

## **ARTICLE V BENEFITS AND DISTRIBUTIONS**

### **5.01 Vesting of Benefits**

A Participant's Accounts in the Plan shall be fully vested and non-forfeitable at all times. Such Accounts shall be distributed as provided in this Article V.

### **5.02 Benefit Payments**

Payment of benefits under any of the provisions of this Plan shall be made by the Trustee in accordance with the directions of the Defined Contribution Committee as to method, commencement date, amounts and payees unless the Participant elects otherwise in writing fully describing the benefits and commencement date of benefits. Notwithstanding any provision in the Plan to the contrary, the payment of benefits to a Participant shall be made in accordance with the requirements of Code Section 401(a)(9) and the regulations hereunder including the minimum distribution incidental benefit requirement.

In lieu of or as part of any of the benefits herein provided, the Defined Contribution Committee may instruct the Trustee at any time to purchase or acquire by conversion rights, from an insurance company, immediate or deferred, level or variable, individual or group annuity contracts which provide benefits substantially equivalent to the benefits herein provided. Such contracts or individual certificates may either be held by the Trustee as owner, or if directed by the Defined Contribution Committee, shall be transferred to the Participant or the Participant's Beneficiary, subject to an endorsement making them nontransferable except to the company which issued them, in complete satisfaction of their equivalent benefits herein above provided and in full discharge of all liability of the Employer and Trustee hereunder.

### **5.03 Distribution Limitations**

Employer Contributions as defined in Article III are not distributable earlier than upon one of the following events:

- (a) the Participant has reached his or her Normal Retirement Date as defined in Section 1.24 and has separated from service; or
- (b) the Participant has attained age 59½; or
- (c) the Participant has separated from service prior to his or her Normal Retirement Date as defined in Section 1.24; or
- (d) the Participant has died or become Disabled, as defined in Section 1.13.

### **5.04 Form of Benefit Payment**

- (a) Benefits shall be paid in one of the following ways:
  - (i) by a full or partial lump sum payment. This will be the automatic form of payment if the value of the Participant's account is less than \$5,000 or a lower amount as determined by the Defined Contribution Committee; or

- (ii) payments by installments by continuation of the account in the trust with adjustments for periodic valuations subject to (b) below.
- (b) If payment is by installments, the following shall apply:
  - (i) Installment payments shall be made at least annually. A participant may elect to vary the amount or frequency of any such payments at least once each calendar quarter. However, at no time may the installment period exceed the Participant's life expectancy.
  - (ii) Installments shall normally be substantially equal over the period of payout. Variations may occur because of redetermination of the Participant and spouse's life expectancy under Section 5.05 or changes in the account balances because of trust investment results. The installment sizes may also be changed by the recipient subject to the rules of the Defined Contribution Committee and applicable law.
  - (iii) Installments in any year shall not be less than an amount determined by dividing the account balances by the joint and last survivor life expectancy of the Participant and designated Beneficiary as of the first of the year, starting with the year in which payments begin.
- (c) No distribution from this Plan shall be made in the form of a life annuity.

#### 5.05 Limitation on Form of Benefit

- (a) Subject to (b) of this Section, benefits may be paid over a period not longer than the life expectancy of the Participant and of the designated Beneficiary, if any.
- (b) The Defined Contribution Committee shall determine installment sizes and life expectancies as of the benefit starting date using actuarial assumptions acceptable to the Treasury Department. The life expectancy of a Participant or spouse may be recalculated annually.
- (c) The present value of payments to be made to the Participant must be over 50 percent (50%) of the value of the total benefit as of the end of the Plan Year in which the Participant retires or reaches age 65, whichever is later.
- (d) Distributions to each Participant shall be made not later than such Participant's "required beginning date" as determined in accordance with Section 401(a)(9)(A), (B) and (C) of the Internal Revenue Code and regulations hereunder.

The Participant's "required beginning date" is April 1 of the year following the later of:

- (i) the year in which the Participant attains age 70½, or
- (ii) the year in which the Participant separates from service with the Employer.

- (e) Within each Account, withdrawals will be taken from amounts of all funds in which the Participant is invested on a prorated basis, or as the Participant otherwise specifies, pursuant to rules established by the Plan Administrator.

#### 5.06 Benefits Upon Death

- (a) Upon the death of a Participant, the Plan Administrator shall direct that the deceased Participant's accounts be distributed to the Participant's Beneficiary.
- (b) The Plan Administrator may require such proper proof of death and such evidence of the right of any person to receive payment of the value of the account of a deceased Participant, as the Administrator may deem appropriate. The Plan Administrator's or its designee's determination of death and of the right of any person to receive payment shall be conclusive.
- (c) Notwithstanding any provision in the Plan to the contrary, distribution upon the death of a Participant shall be made in accordance with the following requirements and shall otherwise comply with Code Section 401(a)(9) and the regulations there under including the minimum distribution incidental benefit rules.
- (d) If minimum payments under Code Section 401(a)(9) have not begun upon the death of a Participant and the designated Beneficiary is not the Participant's surviving spouse, death benefit payments must:
  - (i) begin to be distributed to the designated Beneficiary no later than the December 31 of the calendar year immediately following the calendar year of the Participant's death payable over a period not to exceed the life expectancy of the Beneficiary; or
  - (ii) be distributed no later than the December 31 of the calendar year containing the fifth anniversary of the Participant's death.
- (e) If the designated Beneficiary is the Participant's surviving spouse and minimum payments under Code Section 401(a)(9) have not begun upon the death of a Participant, minimum payments to the surviving spouse must begin by the later of the:
  - (i) December 31 of the calendar year immediately following the calendar year in which the Participant dies; or
  - (ii) December 31 of the calendar year in which the Participant would have attained age 70½.

The payment to the surviving spouse must be made over a period not to exceed the surviving spouse's life expectancy. However, a surviving spouse may elect to receive the death benefit payments no later than the December 31 of the calendar year containing the fifth anniversary of the Participant's death.

- (f) If minimum payments under Code Section 401(a)(9) have begun prior to the death of the Participant, the remaining portion of the Participant Account shall be

distributed to the Beneficiary(ies) at least as rapidly as under the method of distribution in effect prior to the death of the Participant.

**5.07 Beneficiary Designation**

Each Participant has the right, by written notice filed with the Plan Record Keeper, to designate one or more Beneficiaries to receive any benefits payable under this Plan in the event of the Participant's death prior to the complete distribution of benefits provided that the sole Beneficiary of a married Participant shall be his or her surviving spouse unless the Participant has designated another Beneficiary with the written consent of such spouse. The designation may be made, and may be revoked and changed, only on a County approved Beneficiary Designation Form provided by the Plan Record Keeper. The Participant accepts and acknowledges that he or she has the burden for executing and filing with the Plan Record Keeper the proper Beneficiary Designation Form. It is not binding on the County or the Plan Record Keeper until it is signed by the Participant, and Participant's spouse if applicable, and filed with and accepted by the Plan Record Keeper. In the absence of such a designation, or if no designated person is living when a benefit is payable, Plan Administrator will direct the Plan Record Keeper in writing to pay any benefits payable under the Plan in the following order of priority:

- (a) Spouse
- (b) Children
- (c) The estate of the Participant.

**ARTICLE VI  
INVESTMENT FUNDS**

**6.01 Fund Investment Options**

Participants will be permitted to invest Contributions made on their behalf, in whole percentages, in any combination of the funds selected for this Plan by the County upon recommendation by the Defined Contribution Committee.

The Plan Administrator, upon recommendation by the Defined Contribution Committee, will establish or change investment funds or cease to accept further investments in previously approved investment funds, as it deems appropriate, in its sole discretion. All contributions on behalf of Participants who make no election will be invested in the fund designated by the Plan Administrator.

The Plan Administrator may establish rules and regulations for the administration of investments and the exercise of investment options under the Plan.

**6.02 Change in Investment of Future Contributions**

The Plan Administrator shall determine the frequency that Participants may change their investment election, but, in any event, no less frequently than quarterly. Such changes shall be made by request with the Plan Record Keeper in such manner as may be prescribed and in accordance with such rules as the Plan Record Keeper may direct.

**6.03 Change in Investment of Existing Account**

As of any Valuation Date or any other date as specified by the Plan Administrator, a Participant may change the manner in which the Participant's existing Account is

invested. Any election will be in whole percentages and will be made by a request to the Plan Record Keeper in accordance with such rules as the Plan Record Keeper may direct.

**6.04 Participant Exercise of Control**

In the case of any Participant who exercises control over the assets in the Participant's Account, no other person shall be liable for any loss which results from the Participant's exercise of control.

**ARTICLE VII  
DIRECT ROLLOVER TRANSFER OPTION**

**7.01 Rollovers from the Plan**

- (a) Notwithstanding any provision of the Plan to the contrary, a Participant shall be permitted to elect to have any "eligible rollover distribution" transferred directly to an "eligible retirement plan" specified by the Participant. The Participant shall, in the time and manner prescribed by the Plan Administrator, specify the amount to be rolled over and the "eligible retirement plan" to receive the transfer. Any portion of a distribution which is not rolled over shall be distributed to the Participant.
- (b) For purposes of this Section, the term "eligible rollover distribution" means any distribution of amounts other than in a distribution form of substantially equal periodic payments (not less frequently than annually) over life or life expectancy of the Participant (or joint life or joint life expectancies of the Participant and the designated Beneficiary) or a distribution over a period certain of ten years or more. Amounts required to be distributed under Code Section 401(a)(9) are not eligible rollover distributions.
- (c) For purposes of this Section, the term "eligible retirement plan" shall mean any other 401(a) plan, a 403(b) program, a governmental 457(b) plan, an individual retirement account as described in Code Section 408(a), and an individual retirement annuity as described in Code Section 408(b).
- (d) The election described in subsection (a) also applies to the surviving spouse after the Participant's death or a spouse or former spouse who is the alternate payee under a qualified domestic relations order as defined in Code Section 414(p).

**7.02 Transfer to County Retirement Plan**

Participants may elect to transfer all or a portion of their Employer Contribution Account or Employee Rollover Contribution Account and/or amounts in their Accounts attributable to direct rollovers to the San Bernardino County Employees' Retirement Association (SBCERA), for the purpose of purchasing prior service credit in accordance with the County Employee's Retirement Law of 1937 (Gov. Code, § 31641, et seq.), and applicable Resolutions of the Board of Retirement of SBCERA. The amount so transferred shall not exceed the amount to be used for such purpose.

A transfer must be made on the appropriate form filed with the Plan Administrator. The transfer will be made as soon as administratively feasible following approval of the transfer by the Plan Administrator.

The Plan Administrator may establish rules for the administration of this Section.

## **ARTICLE VIII TRUSTEE**

### **8.01 Duty of Trustee**

The Trustee shall be selected by the County upon recommendation by the Defined Contribution Committee. The duties of the Trustee shall be confined to safeguarding the Trust assets and carrying out the directions of the Defined Contribution Committee. The Trustee shall assume such level of investment responsibility as the Defined Contribution Committee may direct. The directions of the Defined Contribution Committee to the Trustee may be verbal unless the Trustee requests a written confirmation. The Trustee shall be fully protected in acting upon any authorization or direction given to the Trustee in the form provided herein and believed by it to be genuine. The Trustee shall discharge its duties under this Plan solely in the interest of the Participants and for the exclusive purpose of providing benefits to such persons and defraying reasonable expenses of administering the Trust, with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims, and by diversifying the investments of the Trust so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so, all in accordance with the provisions of this Plan. The duties and obligations of the Trustee as such shall be limited to those expressly imposed upon it by this Plan, it being hereby expressly agreed that the Trustee is not a party to the Plan.

### **8.02 Powers of Trustee**

In the discharge of its duties as described herein, the Trustee shall have all powers necessary to hold in trust and administer the Trust Fund as contemplated hereby, including, but not limited to the power:

- (a) To receive the income of the Trust Fund;
- (b) To pay the expenses of the Trust (including any taxes) out of the Trust Fund, including reasonable compensation for its services as Trustee (if and to the extent that the Employer does not pay such expenses and compensation);
- (c) To employ suitable agents and counsel and pay their reasonable expenses and compensation out of the Trust Fund (if and to the extent that the Employer does not pay such expenses and compensation);
- (d) To manage, control, sell, convey, exchange, partition, divide, subdivide, improve and repair; to grant options and to sell upon deferred payment; to lease for terms within or extending beyond the duration of this Trust, for any purpose, including exploration for removal of gas or other minerals, to enter into community oil leases; to create restrictions, easements and other servitudes; to compromise



and defend action and proceedings; to carry such insurance for the protection of the Trust estate as the Trustee may deem advisable;

- (e) To invest and reinvest, without distinction between principal and income, any money at any time held in trust hereunder in any securities, including common and preferred stocks, bonds, put and call options (including the granting of option to purchase and sell securities), interest in limited partnerships whose purpose is investing and reinvesting in securities or property, or in any other property, real or personal, tangible or intangible, including real estate loans and common trust funds established by the Trustee or other institutional Trustees and to retain as part of the Trust Fund any securities or other property received or acquired by it; irrespective of whether or not such securities or other property are approved by law as investments for trust funds;
- (g) To hold uninvested any cash contributions to the Trust Fund and to create reserves of cash or other assets of the Trust Fund, without liability for interest thereon, for the payment of expenses, or for distribution pursuant to the Plan, or for any other purpose in connection with the Plan;
- (g) To deposit any monies at any time held in the Trust Fund in any savings bank or in the savings department of any bank or Trust company including, where applicable, the savings department of the Trustee;
- (h) To borrow money, including purchasing stock on margin, and to secure the same by mortgage, deed of trust, or pledge of the Trust Fund, or any asset constituting a part thereof, and to pay and discharge any and all indebtedness of the Trust or any liens or other charges against the Trust Fund;
- (i) To have, respecting bonds, shares of stock and other securities, all the rights powers and privileges of an owner, including holding securities in the names of the Trustee or in the name of a nominee with or without disclosures of the Trust, voting, giving proxies, making payments of calls, assessments or other sums deemed by the Trustee expedient for the protection of the Trust Fund, exchanging securities, selling or exercising stock subscriptions or conversion rights participating in foreclosures, reorganization, consolidations, mergers, liquidations, pooling agreements, voting trusts, and assenting to corporate sales, leases and encumbrances;
- (j) To enter into any contracts with, or purchase life insurance or annuity contracts, issued by any insurance company or insurance companies as investments of the Trust and for the purpose of providing for the payment of all or any part of the benefits payable under the Plan, and to disburse under any such contracts or for the purchase of any such contracts any monies held in the Trust Fund. If the terms of any such policy or contract conflict with the provisions of the Plan, the provisions of this Plan shall control;
- (k) To borrow the cash values of annuity or insurance contracts held in the Trust Fund. The Trustee may invest such borrowed funds in any security or other property including premiums for the same or other insurance or annuity contracts

held by or applied for by the Trustee for purposes of the Trust. The Trustee's power hereunder shall be exercised only as directed by the Defined Contribution Committee.

- (l) To settle, compromise or submit to arbitration any claims, debts or damages due or owing to or from the Trust Fund; to commence to defend legal proceedings for or against the Trust; and to represent the Trust in all proceedings in any court of law or equity or before any other body or tribunal. The Trustee shall not exercise any of the powers conferred upon it by this Section 8.02 without first giving notice of the action proposed to be taken to the Defined Contribution Committee and obtaining written approval of such action from the Defined Contribution Committee.

#### 8.03 Liability of Trustee

The Trustee shall not be liable or accountable in any manner to the Defined Contribution Committee or any person for or by reason of any action taken or omitted by it under the instruction of the Defined Contribution Committee, or on the basis of any facts certified to it by the Defined Contribution Committee; nor for or by reason of its omission to act in the absence of instructions to the Trustees as herein provided for, the Trustee may, but shall not be required to, act without such instructions, as in its discretion seems appropriate and advisable under the circumstances, for the carrying out of the purpose of this Trust. The Trustee may employ agents and consult with legal counsel (who may or may not be counsel to the Employer) concerning the duties hereunder.

#### 8.04 Retention of Assets Pending Settlement of Dispute

In the event that a dispute arises as to the persons to whom payment and the delivery of any funds or property shall be made by the Trustee, it may retain or postpone such payment or delivery until actual adjudication of such dispute has been made in a court of competent jurisdiction or it shall have been indemnified against loss to its satisfaction.

#### 8.05 Fees or Expenses

The Trustee's fees or expenses for its services as Trustee shall be such as may be mutually agreed upon by the Employer and such Trustee. Any Trustee who is an employee of the Employer shall serve without compensation, but shall be reimbursed by the Employer for all reasonable expenses incurred on behalf of the Plan.

#### 8.06 Maintenance of Accounts and Records

The Trustee shall keep accurate and detailed records and accounts with respect to all assets included in the Trust Fund, and all investments, receipts and disbursements and other transactions involving the Trust, including individual and separate voluntary contribution accounts for individual employees participating in the Plan. All such accounts, books and records shall be open for inspection at all reasonable times by the Defined Contribution Committee or by any person or persons duly authorized by the Defined Contribution Committee or otherwise required by law. Within one hundred twenty (120) days following the close of each Plan Year of the Trust, the Trustees shall render to the Defined Contribution Committee accounts of its administration of the Trust during the period since the last valuation date. An independent auditor shall at the same time submit a report on the financial statements and administrative procedures.

8.07 Valuation of Trust Fund

If the Trustee shall determine, in making any valuations under the terms of this Plan, that the Trust Fund, or any separately held account, consists in whole or in part of property not traded freely, on a recognized market, or that information necessary to ascertain the fair market value thereof is not readily available the Trustee may (but shall not be required to) request the Defined Contribution Committee for instructions as to the valuation to be placed on such property. The Defined Contribution Committee shall, with the assistance of someone competent in such matters, determine the value of such property and such determination shall be conclusive and binding for all Plan purposes. If the Defined Contribution Committee shall fail or refuse to instruct the Trustee as to the value of any such property within the time permitted the Trustee to make any required valuation, the Trustee may place fair and reasonable value upon such property and shall not be liable to any of the parties enumerated in the preceding sentence for loss or damage in so doing

8.08 Resignation or Removal of Trustee

The Trustee may resign at any time by giving ninety (90) days written notice to the County. The County may remove the Trustee at any time upon thirty (30) days written notice or immediately if the Trustee has breached its responsibility under the Plan. In case of resignation or removal of the Trustee, said Trustee shall have the right of a settlement of accounts, which may be made at the option of the Trustee either by judicial settlement in any action in a court of competent jurisdiction, or by agreement of settlement between the Trustee and the Employer.

8.09 Approval of Trustee's Account

The written approval of any Trustee account by the Employer or Defined Contribution Committee shall be final as to all matters and transactions stated or shown therein, and binding upon the Employer,) Defined Contribution Committee, and all persons who then shall be or thereafter shall become interested in this Trust. Failure of the Employer or Defined Contribution Committee to notify the Trustee within ninety (90) days after receipt of any account of its disapproval of the account shall be the equivalent of written approval.

8.10 Appointment of Successor Trustee

Resignation or removal of the Trustee shall not terminate the Trust. In the event of vacancy in the Trusteeship of this Trust occurring at any time, the County shall appoint a successor Trustee. Any such successor Trustee shall have all the powers and duties herein conferred upon the original Trustee. The title to all Trust property shall automatically vest in a successor Trustee without the execution or filing of any instrument or the doing of any act, but the resigning or removed Trustee shall, nevertheless execute all instruments and do all acts which would otherwise be necessary to vest such title or record in any successor. The appointment of a successor Trustee may be effected by amendment to this Plan or by written action of the Employer without such amendment, the agreement of successor Trustee to act as such being evidenced by its execution of such amendment or of a copy of such resolution.

8.11 Payments to and Distributions from the Trust Fund

The Trustee shall from time to time, on the written direction of the Defined Contribution Committee or Plan Administrator, make payments out of the Trust Fund to such persons, in such manner, in such amounts, and for such purposes as may be specified in the written directions of the Defined Contribution Committee, and upon any such payment being made, the amount thereof shall no longer constitute a part of the Trust Fund.

Each such written direction shall be accompanied by a certificate of the Defined Contribution Committee that the payment is in accordance with the Plan including, but not limited to, benefit payments; reasonable expenses of the Plan and Trust; return of contributions made subject to qualification or made in error. The Trustee shall not be responsible in any way with respect to the application of such payments or the Trust Fund to meet and discharge any and all liabilities under the Plan. In the event that any dispute shall arise as to the identity or rights of persons entitled to benefits hereunder, the Trustee may withhold payment of benefits until such dispute shall have been determined by a court of competent jurisdiction or shall have been settled by written stipulation of the parties concerned.

**ARTICLE IX  
ADMINISTRATION OF PLAN**

9.01 The Defined Contribution Committee

There shall be a Defined Contribution Committee consisting of nine members. The Defined Contribution Committee shall have complete authority to interpret, control, and manage the operation of this Plan in accordance with the provisions hereof. "Defined Contribution Committee" shall consist of the following positions: the County Administrative Officer, the Director of Human Resources, the Executive Director/Chief Investment Officer of the San Bernardino County Employees Retirement Association, the Treasurer/Tax Collector, three members appointed by the County Administrative Officer, one member appointed by the San Bernardino Public Employees Association, and one member appointed by the Safety Employees Benefit Association. The appointed members shall serve at the pleasure of the County Administrative Officer. The Defined Contribution Committee shall advise the Plan Administrator and the Board of Supervisors on all matters of policy affecting the Plan.

The Trustee shall be promptly notified of the original membership and any change in membership of the Defined Contribution Committee by the County Administrative Officer and until so notified, the Trustee may assume the membership continues without change. The elected County Auditor/Controller-Recorder shall serve as an ex-officio member of the Defined Contribution Committee.

The members of the Defined Contribution Committee must discharge their duties solely in the interest of the Participants and must adhere to the same standard of conduct as outlined in Section 8.01.

If the authorized action of a member, while serving on the Committee, results in a claim against the County or a lawsuit against the County or the appointee, the County will provide a defense and pay any/all settlements or judgments provided the claim arises

out of the member's acts within the scope of his or her official duties, the member requests such representation, and the member cooperates in the defense of the action. Punitive or willful or intentional malice damages may not be covered by the County.

If, while driving a personal vehicle on appointed Defined Contribution Committee business, a member is involved in a vehicle accident, primary liability is to be provided by the member's personal vehicle liability insurance company.

9.02 Power to Direct Investments

The Defined Contribution Committee may, if it chooses, direct, either verbally or in writing, the acts of the Trustee in investing, reinvesting, disposing of or encumbering the principal and income of the Trust. If the Defined Contribution Committee does not choose to direct the Trustee in investing or reinvesting, the Defined Contribution Committee reserves the right in any case to be consulted by the Trustee with regard to any and all investments, reinvestments, dispositions of or encumbrances of the principal and income of the Trust. The Defined Contribution Committee shall give the Trustee additional or clarifying directions, if the Trustee requests.

9.03 Investment Advisor or Managers

The County may hire one or more professional investment managers or advisors to direct the Trustee as to the investment of Plan assets.

9.04 Separate Investments

The Defined Contribution Committee may determine, in its discretion, that Participants shall be offered two or more investment choices, such as, for example, a family of mutual funds. In such event, where applicable, a separate Account shall be maintained for each investment that a Participant has elected. The investment earnings and gains or losses, and any applicable expenses, shall be separately accounted for with respect to each investment fund.

The Defined Contribution Committee may also, in its discretion, permit individual Participants to direct the investment of a portion or all of their Accounts. No other person shall be liable for any loss due to the Participant's exercise of control.

9.05 Power to Interpret and Administer Plan

The Plan Administrator shall determine all questions regarding interpretation, application and administration of the Plan, and its determination of any questions shall be final. Without limiting the powers set forth above, the Plan Administrator shall have the power: to construe the Plan; to determine all questions and make rules relating to the administration of the Plan and the eligibility of Employees; to authorize all disbursements by the Trustee from the Trust; to modify the investment program; and to compute and certify to the Trustee the benefits payable to Participants.

9.06 Employer Shall Supply Information

The Employer shall supply to the Plan Administrator or its designee full and timely information on all matters relating to the compensation of the Participants, their employment, retirement, death, or other termination, and all such other pertinent facts as the Plan Administrator or its designee may require. The Plan Administrator shall

furnish the Trustee such information as the Trustee may require in carrying out its duties under the Plan.

9.07 Compensation of Defined Contribution Committee Members

Each Defined Contribution Committee member shall serve without compensation for their services, but shall be reimbursed by the Employer for all reasonable expenses.

9.08 Plan Expenses

The County, the Defined Contribution Committee, or the Plan Administrator may hire outside administrators, advisors or other persons to assist in the administration of the Plan. Resultant expenses and any other expenses of the Plan shall be paid either by the County or by the Plan, at the County's discretion. Expenses paid by the Plan shall be allocated equitably over the Accounts of Participants.

## **ARTICLE X INVESTMENT OF TRUST FUNDS**

10.01 Plan Establishes Trust Fund

The Plan establishes a Trust Fund consisting of such monies or other property as the Employer from time to time deposits with the Trustee.

The Contributions of the Employer and Participants shall be deposited in the Trust Fund and shall be held, together with all other assets of the Plan, except insurance contracts and assets of any insurance company which has issued contracts under or holds assets of the Plan, shall be held in trust by one or more Trustees. The Trustee or Trustees shall be appointed by the County. Upon acceptance, those being named or appointed as Trustee or Trustees shall have exclusive authority and discretion to manage and control the assets of the Plan, except to the extent that the Defined Contribution Committee or an outside investment manager or advisor shall properly direct the Trustee.

10.02 Trust Fund for Benefit of Participants

No person shall have any rights or interest in or to the Trust hereby created or the Trust Fund or under one or more contracts described in Code Section 401(f), or any part thereof, except as expressly provided herein. Notwithstanding any other provisions hereof, or, any amendments hereof to the contrary, at no time shall the Trust Fund, or any part thereof, revert to or become the property of the Employer to be used for or diverted to purposes other than for the exclusive benefit of Participants and former Participants or their respective Beneficiaries or estates, or for the administrative expenses of the Trust and the Plan, except as otherwise herein specifically provided.

10.03 Authorized Investments and Reinvestments

The Trustee accepts the Trust herein created and agrees to perform the obligations imposed by this Trust.

The Trustee shall make investments and reinvestments (except as the Trustee may otherwise be directed by the Defined Contribution Committee).

**ARTICLE XI**  
**AMENDMENT TERMINATION OR DISCONTINUANCE OF CONTRIBUTIONS**

**11.01 Right to Amend or Terminate the Plan**

The County may amend the Plan, retroactively or otherwise, at any time. No such amendment may have the effect of vesting in the Employer any part of the Trust Fund, or of diverting any part of the Trust Fund for purposes other than for the exclusive benefit of Participants and Beneficiaries. No amendment will deprive any Participant or Beneficiary of any previously vested benefit.

Continuance of the Plan and payment of Plan Contributions are entirely voluntary and are not assumed as contractual obligations of the County or other Employer. The County reserves the right to terminate the Plan in whole or in part or to discontinue Plan Contributions at any time.

**11.02 Distribution of Trust Fund Upon Termination**

If the Plan terminates or Plan Contributions discontinue completely, all Participants' Accounts will be fully vested and will be distributed to them in a manner determined by the Defined Contribution Committee, in its sole discretion.

**ARTICLE XII**  
**MISCELLANEOUS PROVISIONS**

**12.01 Contract of Employment**

The Plan does not constitute a contract between any Employee and the Employer and is not a consideration or an inducement to any Employee for employment by the Employer. Nothing contained in the Plan gives any Employee the right to be retained in the employ of the Employer or to interfere with the right of the Employer to discharge or to terminate the employment of an Employee at any time without regard to the effect of such action on Plan rights. No Participant or Beneficiary has any rights against the County nor any other Employer for benefits payable under the Plan other than rights, if any, with respect to the Trust Fund.

**12.02 Furnishing of Information**

Unless otherwise expressly provided in the Plan, all benefits to which any Participant or Beneficiary may be entitled will be determined according to the provisions of the Plan in effect on such Participant's Severance from Service Date. In order to receive any Plan benefits, a Participant must furnish the Plan Administrator with such information that may reasonably be required for purposes of proper Plan administration.

**12.03 Assignment or Alienation of Benefits**

Except pursuant to a domestic relation's order, any benefit payable under the Plan is not subject in any manner to assignment, alienation, anticipation, sale, transfer, pledge, garnishment, encumbrance, lien or charge. Any attempt to cause any benefit to be so subjected will not be recognized except to the extent required by law.

Subject to the procedures established by the Plan Administrator pursuant to the provisions of this Plan, benefits may be paid from the non-forfeitable balance of a

Participant's Account in accordance with a domestic relations order as defined in Section 414(p)(1)(A)(i) of the Internal Revenue Code without regard to whether the Participant has attained the "earliest retirement age," as defined in Section 414(p) of the Code.

12.04 Merger of Plans

In the event of any merger or consolidation of the Plan with, or transfer of assets or liabilities of the Plan to, any other retirement plan, Participants or Beneficiaries will, if such other plan then terminates, be entitled to receive a benefit immediately after the merger, consolidation, or transfer that equals or is greater than the benefit to which they would have been entitled immediately before the merger, consolidation or transfer if the Plan had then terminated.

12.05 Substitute Payee

If a Participant or Beneficiary entitled to receive any distribution from the Plan is a minor, or is, in the judgment of the Plan Administrator, legally, physically, or mentally incapable of personally receiving any distribution, the Plan Administrator may make distributions to a legally appointed guardian, or to such other person, persons, or institutions as it may judge to be then maintaining or to have custody of the payee.

12.06 Governing Law

The Plan will be construed and interpreted in accordance with the laws of the State of California, to the extent federal laws do not control.

12.07 Effect of Invalidation of Specific Provision

If any provision of the Plan is held to be invalid or unenforceable, the other Plan provisions will not be affected, but will be applied as if the invalid or unenforceable provision had not been included in the Plan.

12.08 Conflicts with Applicable Laws or Regulations

Notwithstanding any provision of the Plan to the contrary, in the event that any provision of the Plan conflicts with applicable laws or regulations, or as they may be amended from time to time, the Plan shall be deemed to have been amended to be in conformity with said laws or regulations.

IN WITNESS WHEREOF, the County of San Bernardino has adopted this Plan and caused this instrument to be executed by its officers duly authorized, this 3rd day of June, 2003.

COUNTY OF SAN BERNARDINO

BY: \_\_\_\_\_  
Dennis Hansberger, Chairman, Board of Supervisors